Compact for Home Opportunity:

What America Can Do to Stop Foreclosures and Fulfill the American Dream
Table of Contents

Executive Summary ........................................................................................................ 1

Introduction ..................................................................................................................... 7

Solutions .......................................................................................................................... 9
  I. Preventing Foreclosures ......................................................................................... 9
  II. Ensuring Fair and Sustainable Mortgages ............................................................. 13
  III. Restoring Neighborhoods .................................................................................... 15
  IV. Rebuilding Economic Security .............................................................................. 17
  V. Fostering Fair Housing .......................................................................................... 19

Conclusion ...................................................................................................................... 21

Endnotes .......................................................................................................................... 21

Appendix .......................................................................................................................... 27

February 2012
Executive Summary

Access to an affordable home under fair and sustainable terms is crucial to our economic security and central to the American Dream. Yet misconduct by banks and lenders, inadequate rules and enforcement, and record unemployment rates are robbing millions of Americans of their homes and security while ravaging whole communities and holding back our national recovery.

Clear solutions exist that prevent foreclosures and restore communities today while repairing the American Dream into the future. We call upon policymakers, the banking and lending industry, and everyday Americans to adopt or demand the following solutions to our housing crisis.

Banks and Mortgage Servicers should:

Prioritize Loan Modification. Banks and servicers should make good faith efforts to prevent foreclosures. This includes identifying and contacting at-risk borrowers as soon as possible, as well as modifying loans to the extent their legal obligations allow. They should systematically conduct Net Present Value (NPV) analyses, which determine whether investors profit more from a loan modification or a foreclosure. Banks can also put the foreclosure process on pause for borrowers in default by offering a voluntary moratorium while they better evaluate whether foreclosure is necessary and work toward loan modifications. Banks and servicers should ensure that they have sufficient staff and resources devoted to modifying loans as appropriate. For a number of major servicers, many of these steps are required under the terms of their settlement agreement with the federal government and state attorneys general. All servicers should take meaningful, systematic measures to implement these reforms, even where not required by the settlement.

Responsibly Maintain Properties in Foreclosure. Properties in foreclosure often fall into disrepair, endangering neighborhood property values and public safety. The banks that own those properties after foreclosing on them must maintain them responsibly. Banks should keep the properties in good, safe condition, and should consider selling the properties at a fair price to community organizations and non-profits.

Engage in Mediation with Borrowers. When borrowers face foreclosure, mandatory mediation with lenders can provide a successful way to reduce the losses for both parties. In this process, a neutral mediator, such as a counselor or lawyer, helps the two parties negotiate and agree on an outcome. Servicers should voluntarily submit to mediation.

Improve Credit Scoring Criteria. Credit scoring criteria that do not accurately reflect risk have been damaging to individuals, communities, and the market. And they have resulted in unwarranted loan denials to people of color in particularly high numbers. Banks and servicers should monitor their own practices for discriminatory effects and revise them as necessary.

Improve the Servicer Compensation Structure. The loan servicing industry was poorly structured to address the high rates of foreclosure that followed the housing market collapse. Many servicing contracts fail to clearly define the obligations of servicers to minimize losses on defaulting loans, and flat fee compensation structures do not incentivize servicers to invest the time necessary to prevent foreclosures. Compensation models should be restructured so that servicers are compensated for time spent producing modifications.
Congress should:

Expand Counseling. Counseling programs help potential and current homeowners attain the financial literacy they need to navigate complex mortgage transactions, make their payments, and save for the future. Counseling has been found extremely effective in helping borrowers, but more resources are needed. The Department of Housing and Urban Development’s counseling budget was eliminated in 2011, and while some funding was restored for 2012, the amount was less than half that requested by HUD. Congress should fully restore counseling resources and ensure that housing counseling is better funded in subsequent years.

Increase Consumer Protections. Congress should take steps to provide better consumer protections by supporting robust enforcement of predatory lending and fair housing laws. Congress should provide funding for the Consumer Financial Protection Bureau, Department of Justice, and other agencies to undertake strong supervision and enforcement of these laws, and engage in oversight of federal agencies to ensure that they are vigorously enforcing the law.

Make the Protecting Tenants at Foreclosure Act Permanent, and Empower Tenants to Enforce It. Renters suffer when foreclosures happen, due to resulting evictions and poor building maintenance. Renters in foreclosed properties are protected from eviction by the Protecting Tenants at Foreclosure Act (PTFA), but the Act is due to expire in 2014 and is not uniformly enforced. The PTFA needs to be made permanent and strengthened, including with a private right of action for tenants to enforce it.

Allow Mortgages to be Restructured in Bankruptcy. Currently, a loan owed on a primary residence cannot be restructured in bankruptcy. Congress should pass legislation amending the bankruptcy code to allow bankruptcy courts to refinance mortgages when restructuring debt. This would allow borrowers to potentially keep their homes, while the debt would be restructured to make continuing payments possible.

Enact Positive Reform of Government Sponsored Enterprises. Loan securitization policies and practices shape the extent to which sustainable mortgages are reliably available, and are needed to incentivize the operation of inclusive, accurate lending. Equitable reform of the secondary mortgage market is thus a crucial step. Congress should pass legislation that will continue government engagement in the secondary mortgage market, to support both stability (by ensuring constant and stable funding) and coverage (by ensuring the availability of financing for sustainable loans to all qualified home buyers and owners) in mortgage lending.

Ensure Consumer Readiness. Many families aspire to homeownership and have the potential to become successful homeowners, but they need help navigating the financial aspects. The federal government can aid in consumer readiness by increasing opportunities for low-income households to save for a down payment, as through asset-building programs.

Strengthen Community Development Programs. Existing community development programs need to be strengthened to effectively stabilize communities. These programs can help both owners and renters retain housing, as well as provide jobs and other public benefits. For example, Congress should increase investment in the Neighborhood Stabilization Program, which provides funding for states and localities to redevelop foreclosed properties; the National Housing Trust Fund, which can help develop and preserve rental housing; and Community Development Block Grants, which can help promote lease-to-owner and other programs.

Encourage Mixed-Use Zoning. Congress should expand the Community Challenge Planning Grant Program run by HUD, which supports municipalities’ efforts to create affordable, sustainable communities through mixed-use zoning and other reforms. This would aid community renewal by providing broader options for land use.
Modernize the Community Reinvestment Act. The Community Reinvestment Act (CRA) requires federally insured banks and thrifts to offer credit to qualified borrowers throughout the neighborhoods from which they take deposits, and rates those institutions on the basis of their lending performance in those neighborhoods. This has helped reduce discriminatory credit practices ("redlining") that have historically excluded low-income communities. Congress should revise and expand the CRA to apply to a broader array of institutions, with a more nuanced rating system.

Expand Owner Re-Sale Seed Capital Programs. Owner re-sale programs involve a third party that purchases a foreclosed property and re-sells it to the former owner at a reasonable price. Existing local-level efforts would benefit from Congressional involvement to bring them to scale, through new legislation and investment.

Expand Own-to-Rent Programs. Own-to-rent (or sale-leaseback) programs allow former homeowners to stay in place and rent their residence after foreclosure. Thus far, these have been local-level efforts that would benefit from federal involvement to bring them to scale. Congress could implement a "Right to Rent" plan by passing legislation that would give former owners the right to remain in their homes at market rate rent for a significant length of time.

Expand Homelessness Prevention Programs: Congress can help prevent homelessness among displaced households by expanding federal grant programs. In particular, Congress should invest in the Emergency Solutions Grants administered by HUD, which provides funding to local governments and nonprofits to operate transitional housing and shelter programs, as well as for homelessness prevention.

Remove Restrictions on Legal Assistance. Trained and adequately-funded legal assistance is needed to help borrowers navigate complex loan documents, as well as state and federal laws to combat fraudulent practices and to help borrowers achieve loan modifications when they qualify. Congress should amend the Housing and Economic Recovery Act to remove funding restrictions that undercut effective legal advocacy for homeowners and tenants, such as limits on legal service organizations’ abilities to bring class actions.

The Obama Administration and Federal Agencies should:

Reform and Expand the Making Home Affordable Program. Federal efforts to address the foreclosure crisis include the administration’s Making Home Affordable Program, an initiative developed by the Treasury Department which includes the Home Affordable Modification Program (HAMP). HAMP is intended to help eligible homeowners modify their mortgages, to make payments more affordable and avoid default. But it needs improvements to work effectively. Treasury should adjust its modification programs to make them work for borrowers, including giving homeowners an appeals process for modification denials; requiring banks and servicers to provide clear data on modification denials; and penalizing servicers proven to have violated HAMP rules, including failure to conduct Net Present Value (NPV) analyses (which determine whether investors profit more from a loan modification or a foreclosure).

Reform Servicing Guidelines Effectively. Mortgage servicers act as the managers of mortgage loans, collecting payments which they forward to the mortgage owner and conducting the foreclosure process. Despite their important role in the process, servicers still lack comprehensive guidelines and incentives that would move them towards fair, transparent service and avoiding foreclosures where possible. Regulatory agencies including the Federal Housing Finance Agency should develop improved servicing standards that would serve the needs of vulnerable communities, for example by making sure that servicers are compensated for work on loan modifications. Many improvements to servicing standards are included in the terms of the major servicers’ settlement agreement with the state attorneys general and federal government.
Expand Principal Reductions. Loan modifications that allow homeowners the opportunity to obtain mortgage principal reductions are more likely to be successful and ultimately avoid default. This type of modification reduces the amount due on the mortgage as well as the monthly payments. Treasury and the Federal Housing Finance Agency should provide for more effective modifications that would include principal reductions.

Develop Robust Consumer Financial Protection Bureau (CFPB) Regulations. The CFPB is intended to be an “independent financial watchdog” that creates and strengthens consumer protection laws. The fledgling agency is in the process of developing rules and engaging with stakeholders. It needs to issue muscular rules that serve the agency’s intended purpose, for example through strong fair lending enforcement.

Strengthen Fair Housing Rules. Despite the progress made during the 20th century in promoting fair housing, communities of color continue to experience much higher levels of predatory and subprime lending and discrimination in accessing quality, affordable housing near good schools and other opportunities. Yet the Treasury Department has no civil rights regulations and has neglected fair housing enforcement, while the Department of Housing and Urban Development has failed to provide needed guidance on affirmatively furthering fair housing. Treasury and HUD must act immediately to issue clear rules and ensure equal opportunity throughout the U.S. housing and lending markets.

Require Servicers to Engage in Mediation. When borrowers face foreclosure, mandatory mediation with lenders can provide a successful way to reduce the losses for both parties. In this process, a neutral mediator, such as a counselor or lawyer, helps the two parties negotiate and agree on an outcome. Although mediation is a valuable tool that benefits both parties, it is generally underused in foreclosure proceedings. The Federal Housing Finance Agency should require all servicers acting on behalf of Fannie Mae and Freddie Mac to participate in mediation prior to foreclosure, and Treasury should require the same of all servicers participating in HAMP, including as a way of achieving solutions such as short sales when a modification is not possible.

Issue an Accessible Definition of Qualified Residential Mortgages (QRM). Dodd-Frank requires financial firms to retain 5 percent of the risk on loans, with the exception of loans designated as “qualified residential mortgages,” or QRMs. QRMs are a category of loans deemed to be low-risk, but the terms are left largely undefined by the legislation and are currently under debate. The definition of QRMs is currently pending consideration by the federal banking agencies, the Securities and Exchange Commission, the Department of Housing and Urban Development, and the Federal Housing Finance Agency. These agencies should issue a definition that does not include prohibitively high down payment requirements, as these would disproportionately exclude low- to middle-income borrowers, including many minorities, without significantly reducing risk.

Improve Credit Scoring Criteria. Credit scoring criteria that do not accurately reflect risk have been damaging to individuals, communities, and the market. And they have resulted in unwarranted loan denials to people of color in particularly high numbers. The Consumer Financial Protection Bureau should promote fair scoring systems and be vigilant for violations of the Equal Credit Opportunity Act, which prohibits discrimination on the basis of race or other protected characteristics in the use of credit scores.

Improve Federal Housing Administration Practices and Oversight. The role of the Federal Housing Administration (FHA) in making homeownership accessible to working class Americans, including many families of color, has been a mixed one. Because the FHA will continue to have a role – albeit hopefully not a solo role – in serving working families, including families of color, it is important to improve FHA policies and practices while ensuring (through effective secondary mortgage market reform) that the FHA does not become the only provider for these communities. The Department of
Housing and Urban Development should engage in robust FHA oversight, and the Consumer Financial Protection Bureau and Department of Justice should ensure that FHA-insured loans are fairly and sustainably offered.

**Expand Own-to-Rent Programs.** Own-to-rent (or sale-leaseback) programs allow former homeowners to stay in place and rent their residence after foreclosure. This allows owners facing foreclosure to avoid displacement and maintain family and neighborhood stability. While Fannie Mae and Freddie Mac currently have small own-to-rent programs in place, they should expand those programs to cover a larger number of mortgages.

**Provide Credit Protection for Former Owners.** Many former homeowners have badly and unfairly damaged credit following foreclosures, at a time when they are struggling to rebuild their lives. Tight credit has many ramifications, meaning that people may no longer be able to make simple, necessary transactions. The Federal Housing Administration and Veterans Administration should offer “second chance” loans, designed to help borrowers repair their credit.

**Improve Coordination of Equal Opportunity Enforcement.** While existing laws can help protect homeowners and future borrowers, stronger, more coordinated enforcement of these laws is needed. Federal agencies, including Housing and Urban Development, Justice, Treasury, the Securities and Exchange Commission, and the Consumer Financial Protection Bureau, must better coordinate their efforts to ensure effective enforcement of antidiscrimination laws such as the Fair Housing Act in both the primary and secondary mortgage markets.

**Incentivize Inclusionary Zoning.** Inclusionary zoning is a practice under which municipalities require a share of new construction in their jurisdiction to be affordable to people of low and moderate means. The federal government should incentivize this through allocation of public funding, guidance on fair housing best practices, and enforcement of civil rights laws.

**States and localities should:**

**Improve Access to Legal Assistance and Mediation.** While large numbers of individuals face foreclosure proceedings, many lack the legal representation they need in order to understand the relevant claims, defenses, and court procedures. This means that borrowers are unfairly disadvantaged in these proceedings and vulnerable to misconduct by mortgage owners and their lawyers. States should expand access to the courts and mediation for homeowners facing foreclosure by amending their foreclosure laws to require mandatory mediation and recognizing a right to consult with a trained housing counselor and, as necessary, a lawyer before foreclosure proceedings progress.

**Require servicers to engage in good faith modification efforts.** Loan modification programs have been successful at the state level, and this could be replicated by other states as well as by lenders. An example is the Ohio Compact to Preserve Homeownership, an agreement between the governor and nine subprime mortgage lenders requiring servicers to use good faith efforts to prevent foreclosures, including substantial modification efforts. States should require modification compliance reviews as part of the foreclosure process.

**Ensure Consumer Readiness.** Many families aspire to homeownership and have the potential to become successful homeowners, but they need help navigating the financial aspects. States can aid in consumer readiness by increasing opportunities for low-income households to save for a down payment, as through asset-building programs.

**Promote Flexible Housing Tenures (such as lease-to-own).** Lease-to-own programs allow occupants to lease their home for a specified period of time, while a portion of the rent goes toward a down
payment. These programs offer a “stepping stone” between renting and buying, and can be an effective tool to rebuild the homeownership market. States as well as municipalities should expand on existing models for such programs.

**Expand Own-to-Rent Programs.** Own-to-rent (or sale-leaseback) programs allow former homeowners to stay in place and rent their residence after foreclosure. Thus far, these have been local-level efforts that would benefit from state involvement to bring them to scale. States could implement this “Right to Rent” plan by passing legislation that would give former owners the right to remain in their property at market rate rent for a significant length of time.

**Expand and Enforce Tenant Protections.** As rental properties are transferred among owners, evictions and poor building maintenance often result. While renters currently have some degree of protection under the federal Protecting Tenants in Foreclosure Act, states and localities should also pass laws protecting tenants and notifying them of their rights during foreclosures.

**Improve Coordination of Equal Opportunity Enforcement.** States and municipalities may engage in fair housing and lending enforcement to protect homeowners and future borrowers. They should do so through their own laws as well as enforcement of federal statutes. For example, cities whose neighborhoods have been victimized by discrimination should consider suing lenders under the Fair Housing Act. Additionally, state attorneys general should vigorously enforce the terms of their settlement agreement with major loan servicers, as well continuing to investigate and prosecute violations beyond those addressed by the settlement.

**Require Vacant Property Registration.** Vacant property registration requires owners of vacant properties (such as banks that have foreclosed on mortgages) to register those properties, so that they can be held accountable for maintenance. Towns and cities can pass ordinances requiring banks and other financial institutions foreclosing on a home to register the vacant property with the local municipality.

**Support Creation of Land Banks.** Land banks offer a productive means of dealing with widespread foreclosures. Properties placed in a land bank are rehabilitated and eventually transferred to homeowners or developers, who return those properties to productive use. Where there is no private market for the properties, they can be donated to the municipality as green space or community gardens. Municipalities should seek to develop land banks where possible. States can help fund land banks and can pass land bank enabling legislation that facilitates municipalities’ abilities to efficiently form and operate land banks.

**Encourage Mixed-Use Zoning.** Flexibility in development aids community renewal by providing broader options for land use. Local zoning ordinances that restrict what type of land use is allowed to occur in certain areas (for example, strictly residential use) can impede this process. Municipal governments should consider passing more flexible zoning regulations that allow for more mixed-use zoning.

**Promote Responsible and Productive Disposition of Real Estate Owned (REO) Properties.** Municipalities can also purchase properties for resale to responsible entities, including nonprofit development organizations. These organizations can redevelop foreclosed properties and return them to productive use, including as affordable housing for sale or rent. In addition to stabilizing neighborhoods by preventing vacancies, this can provide badly-needed affordable housing.

**Incentivize Inclusionary Zoning.** Inclusionary zoning is a practice under which municipalities require a share of new construction in their jurisdiction to be affordable to people with low and moderate means. A number of states have adopted legislation that promotes inclusionary zoning, and additional state and municipal governments should follow their lead.
Introduction

Access to an affordable home under fair and sustainable terms is crucial to our economic security and central to the American Dream. But misconduct by banks and lenders, inadequate rules and enforcement, and record unemployment rates are robbing millions of Americans of their homes and security while ravaging whole communities and holding back our national recovery.

Clear solutions exist that can prevent foreclosures and restore communities today while repairing the American Dream into the future.

We propose here a Compact for Home Opportunity, designed to stem foreclosures, restore affected communities, protect fair housing and lending, and ensure that home ownership and affordable housing are accessible pillars of American opportunity into the 21st century. We call upon policymakers, industry leaders, and everyday Americans to adopt these solutions to our housing and financial crisis, and to insist on the implementation and accountability necessary to make them effective.

As we stabilize our economy and neighborhoods, we must also ensure that affordable housing and homeownership remain sources of wealth-building and middle-class mobility for all Americans. Access to fair and sustainable credit opportunities is equally crucial to our economic recovery and to restoring the American dream for everyone.

Cause and Effects

The mortgage and homeownership crisis has its roots in unscrupulous lending practices, driven by irresponsible financial speculation among powerful banking institutions. This behavior thrived in a context of weak consumer protections, one in which many Americans lacked access to traditional, safe mortgage products. Inadequate rules and enforcement allowed banks and brokers to induce borrowers into accepting foreclosure-bound and flawed loans, as they sought exorbitant profits.

These unsustainable practices resulted in a devastating loss of economic security and mobility throughout the nation. The average American family’s household net worth declined 23 percent between 2007 and 2009, and the value of primary real estate holdings decreased by an average of $18,700, often in addition to damaged credit. The median net worth of Hispanic households fell by 52 percent, and that of black households by 30 percent. Yet, as millions of people throughout the country suffer under the impacts of the economic crisis, many have lost their homes — and the security and opportunities that those homes represented. Renters, too, suffer, from poor property maintenance and evictions after their buildings are foreclosed on. These impacts are magnified within communities as foreclosures bring down property values, leading to blighted neighborhoods and decreased tax revenues. States and municipalities struggle to cover the increased costs and decreased revenue resulting from widespread property vacancies. These effects, in turn, are holding back our economy as we struggle to recovery from the economic crisis.

An Unequal Burden

While the foreclosure crisis has touched all Americans, an important aspect of the problem has been predatory and discriminatory lending practices targeting minority borrowers. Unethical brokers and lenders focused on communities that have historically lacked access to sustainable credit. That practice combined with existing isolation from opportunity to cause aggravated harm in communities of color. It is well documented that the foreclosure crisis has resulted in a tremendous loss of wealth
and stability for minority communities in particular. A recent report from the Center for Responsible Lending, for example, found that nearly 8 percent of African-American and Latino homeowners have faced foreclosure, compared to 4.5 percent of non-Hispanic white homeowners. As data gathered under the Home Mortgage Disclosure Act (HMDA) reveals, African Americans and Latinos have received disproportionate shares of unsustainable loans; suffer disproportionate foreclosures; have less access to credit; and witness shrinking homeownership rates. It has been estimated that the loss of wealth resulting from foreclosures in communities of color will be greater than any since Reconstruction.

More Work to be Done

Since the foreclosure crisis hit, the federal government has taken some commendable and much-needed steps to protect future consumers of homes and credit, such as passing the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, more action is needed. American communities, and particularly those of color, still face a persistent tide of foreclosures. An additional wave of foreclosures is expected in 2012, due in part to lender delays in processing an estimated one million defaults in 2011. Gaps in opportunity, including the ability to build wealth, continue to expand. And existing remedies are not sufficient to address these problems.

As we grapple with the effects of the foreclosure crisis and the lessons learned from it, it is important to ensure that in the future, all Americans have equitable access to credit accompanied by effective regulatory oversight, irrespective of race, ethnicity, and zip codes. As individuals and neighborhoods suffer from the aftereffects of foreclosures, we must also counter that harm through targeted efforts to sustain and rebuild the communities that need help most. Policymakers should act decisively to prioritize solutions for these problems, which threaten to overwhelm many American neighborhoods.

Effective, Innovative Solutions Exist

Fortunately, experts around the country, working with practitioners and Americans affected by this crisis, have identified a large body of concrete solutions that can mitigate the crisis today while building stronger communities and sustainable homeownership into the future. For example, the National Community Reinvestment Coalition has consolidated comprehensive, research-based recommendations on innovative programs addressing foreclosures, drawing upon the expertise of organizations convened by the Annie E. Casey Foundation; the Center for Housing Policy has helped produce a policy guide to foreclosure solutions; and the Center for Community Capital at the University of North Carolina at Chapel Hill recently released a book compiling the Center’s years of research on successful loans made to low- and moderate-income borrowers, with recommendations for sustainable homeownership.

The organizations convened by the Annie E. Casey Foundation, which encompass over 140 individual experts representing foundations, financial institutions, practitioners, advocates, and organizers, have identified best practices for addressing the disparate impact of foreclosures on communities of color. And a group convened by the National Council of La Raza and the National Fair Housing Alliance has recommended principles for ensuring that secondary mortgage market reform is fair and effective. Together, they include actions that federal, state, and local officials, industry leaders, civic leaders, and everyday Americans can take now and in the future to advance home opportunity.

We collect and propose them here as a Compact for Home Opportunity, supported by a wide range of experts, housing and community groups, and everyday Americans.

---

* They have also drawn up an Advocacy Agenda highlighting many of the solutions discussed throughout this document, available at: http://foreclosure-response.org/communitiesofcolor.html.

† In particular, we recognize the contributions of the group assembled by the Annie E. Casey Foundation, which were compiled by Maya Brennan, Clare Duncan, and Laura Williams of the Center for Housing Policy.
Solutions

The Compact for Home Opportunity encompasses both urgently-needed remedies and important long-term reform, in five related categories:

- Preventing foreclosures
- Ensuring fair and sustainable mortgages
- Restoring neighborhoods
- Rebuilding economic security
- Fostering fair housing

Adopting the steps described here will save hundreds of thousands of homes, restore devastated neighborhoods, strengthen communities, and help families around the country rebuild their economic security. In doing so, it will help repair our economy and restore the promise of opportunity and the American Dream well into the 21st century. The recommendations comprising the Compact appear in the chart in the Appendix (page 22) and are described in detail in the pages that follow.

I. Preventing Foreclosures

Several years into the economic downturn, the foreclosure crisis continues to plague neighborhoods throughout the country. In September 2011, one in every 605 American homes received a foreclosure filing; in the third quarter of 2011, foreclosure filings were reported on 610,337 properties throughout the country. Due in large part to abusive industry practices and record long-term unemployment rates, a significant number of American homeowners are at imminent risk of losing their homes and will likely face family disruption and damage to their savings and credit ratings. The cumulative effect of foreclosures damages entire communities, which suffer from reduced tax bases and property values.

The right reforms can stem these problems and prevent them in the future. Policymakers can address the foreclosure crisis by investing in counseling programs, aggressively promoting and supporting loan modifications and revising foreclosure procedures to make them fair and comprehensible to borrowers. Even in the absence of new rules, lenders and servicers can act voluntarily to achieve constructive compromises with borrowers and avoid defaults.

1) Make Mediation a Mandatory Part of the Foreclosures Process

When borrowers face foreclosure, mandatory mediation with lenders can provide a successful way to reduce the losses for both parties. In this process a neutral mediator, such as a counselor or lawyer, helps the two parties negotiate and agree on an outcome. Mediation can provide homeowners with more options to stay in their homes or find alternatives to foreclosure, such as loan modifications. This, in turn, benefits entire neighborhoods, towns, and cities by avoiding preventable property vacancies, which otherwise depress home values and property tax revenue.

Although mediation is a valuable tool that benefits both parties, it is generally underused in foreclosure proceedings. States that do not currently require mediation should pass legislation that does so. At the federal level, Congress should provide funding for states and municipalities to initiate programs. In the meantime, even absent sufficient funding, states and municipalities can implement volunteer systems in which attorneys serve in a pro bono capacity as mediators. Additionally, the Federal
Housing Finance Agency should require all servicers acting on behalf of Fannie Mae and Freddie Mac to participate in mediation prior to foreclosure; the Treasury Department should require the same of all servicers participating in the Home Affordable Modification Program, including mediation as a means to achieve solutions such as short sales when a modification is not possible. Servicers should also voluntarily submit to mediation.

2) Invest in Pre- and Post-Purchase Counseling

Counseling programs help potential and current homeowners attain the financial literacy they need to navigate complex mortgage transactions, better manage their finances, and avoid default. Counseling has been found extremely effective in helping borrowers. For instance, a December 2010 Urban Institute review of one large-scale counseling program — the federally-funded National Foreclosure Mitigation Counseling Program (NFMC), operating since 2007 — found that the odds of curing a foreclosure were 1.7 times higher for a homeowner who worked with an NFMC counselor than for a homeowner who didn’t receive such counseling. The review estimated that homeowners who obtain a mortgage modification through the NFMC program paid $3,200 less annually than they would have without the counseling.

Homeownership counseling should be widely available at each stage of the lending process, and more resources are needed. Congress should restore sufficient funding for the Office of Housing Counseling at the Department of Housing and Urban Development (HUD), which was created in the Dodd-Frank legislation. HUD provides grants to housing counseling agencies throughout the country that offer advice on buying a home, renting, defaults, foreclosures, and credit issues. HUD’s counseling budget was eliminated in 2011, and while some funding was restored for 2012, the amount was less than half that requested by the Department. Congress should fully restore counseling resources and ensure that housing counseling is better funded in subsequent years.

Agencies have an important role in expanding effective, high-quality counseling programs, though they first need adequate funding to achieve this. HUD should regularly research and promote best practices in local counseling programs. Additionally, the Consumer Financial Protection Bureau provides for a CFPB Office of Financial Education, required to submit an annual report to Congress on financial literacy in the United States. This report should be used to rigorously, constructively assess the efficacy of counseling programs. Counseling efforts should incentivize long-term, personalized counseling, and should include outreach to people with limited English proficiency.

States and municipalities should encourage or require pre-foreclosure counseling, and should invest in counseling programs by providing funding and developing outreach programs. For example, some successful programs combine the expertise and resources of city agencies, nonprofit groups, and lenders to provide an array of services including counseling, legal advocacy, and loan remediation.

3) Reform Servicing Guidelines

Mortgage servicers act as the managers of mortgage loans, collecting payments which they forward to the mortgage owner, and conducting the foreclosure process. Despite their important role in the process, servicers have lacked comprehensive guidelines and incentives to direct them towards fair, transparent service and avoiding foreclosures where possible. The Administration’s recommendations on reforming the government-sponsored enterprises (Fannie Mae and Freddie Mac) found that the servicing industry was too poorly structured to address the high rates of foreclosure that followed the housing market collapse. For example, servicing contracts often fail to clearly define the obligations of servicers to minimize losses on defaulting loans, and servicers’ flat fee compensation structure does not incentivize servicers to invest the time necessary to prevent foreclosures.
The February 2012 settlement agreement among five major loan servicers, forty-nine state attorneys general, and the federal government was a significant step towards implementing clear, improved servicing standards. However, these guidelines need to be robustly overseen and enforced and should be applied to the industry as a whole, as should compensation reform. Regulatory agencies including the Federal Housing Finance Agency should develop improved servicing standards that would serve the needs of vulnerable communities.22 These standards should be required for all loans guaranteed by the enterprises (Fannie Mae and Freddie Mac), and other loan servicers should take the initiative to adopt them as well.23 The Consumer Financial Protection Bureau should also ensure that clear, improved standards apply to all servicers, through oversight and new regulation as needed.24 Better practices in this area would include requiring a single point of contact for the borrower; a better model for servicing compensation; mandatory loss mitigation by servicers; and increased disclosure requirements. For example, loss mitigation rules could more strictly require that all mortgage holders evaluate the cost of providing a loan modification against the cost of foreclosure, encouraging them to consider alternatives that would benefit homeowners and their surrounding neighborhoods as well as many investors. Compensation models could be restructured so that instead of receiving a flat fee — which encourages foreclosure as an outcome — servicers are compensated for time spent producing modifications.

4) Reform and Expand the Making Home Affordable Program

Federal efforts to forestall the foreclosure crisis include the administration’s Making Home Affordable Program, an initiative developed by the Treasury Department which includes the Home Affordable Modification Program (HAMP). HAMP is intended to help eligible homeowners modify their mortgages,26 to make payments more affordable and avoid default. However, the program has yielded mixed results. Experts and practitioners have concluded that HAMP has provided insufficient incentives to servicers to effectively modify loans, and the servicers often fail to connect with borrowers, even those who should qualify for modification.27 While Treasury reported that nearly 910,000 homeowners had received a permanent modification through HAMP as of November 2011, that number falls far short of the country’s need, given that foreclosure filings have numbered in the millions.28 Treasury should adjust its modification programs to hold servicers accountable to borrowers. This could entail equipping homeowners with an appeals process for modification denials, transferring servicing rights from servicers proven to have violated HAMP rules, and requiring the collection and analysis of clear, disaggregated data on modification denials.29

The Treasury Department and the Federal Housing Finance Agency should direct more effective modification efforts for all loans eligible for the Making Home Affordable Program. Loan principal reduction, which decreases the probability of default or re-default, should be considered in analyzing whether and when foreclosure is necessary.30 Additionally, loan modification data needs to be more transparent and accessible, including data on borrower outcomes disaggregated to reflect demographic trends.31 Appropriate services should be provided for borrowers (and tenants) of limited English proficiency.32

Loan servicers should also ensure that they are complying with HAMP requirements, including the dedication of sufficient staff to modification programs, and systematically conducting Net Present Value (NPV) analyses. These determine whether a loan modification or a foreclosure is likely to benefit the investors, and shield the servicer from liability to investors for modifications.33 Lenders can offer foreclosure stays while they determine what result is in the best interest of all parties.

In addition to the above mentioned accountability measures that should be taken by Treasury, lenders, and servicers, states should require modification compliance reviews as part of the foreclosure process. Loan modification programs have been successful at the state level, and this could be replicated by other states as well as by lenders. An example is the Ohio Compact to Preserve Homeownership, an
agreement between the governor and nine subprime mortgage lenders which requires servicers to use
good faith efforts to prevent foreclosures, including substantial modification efforts.34

5) Improve Legal Assistance

While large numbers of individuals face foreclosure proceedings, many lack the legal representation
they need in order to understand the relevant claims, defenses, and court procedures. This means that
borrowers are unfairly disadvantaged in these proceedings and vulnerable to misconduct by mortgage
owners. Trained and adequately-funded legal assistance is needed to help these individuals navigate
complex loan documents, as well as state and federal laws, to combat fraudulent practices and to help
borrowers achieve loan modifications when they qualify.

The Brennan Center for Justice at NYU School of Law has developed the following recommendations
with the view that “the ability to pay for legal counsel should not determine whether or not someone
loses his or her home:”35 state and federal legislators should dedicate additional financial resources
to foreclosure legal assistance, directed to the hardest hit communities; Congress should amend the
Housing and Economic Recovery Act to remove funding restrictions that undercut effective legal
advocacy for homeowners and tenants, such as limits on legal service organizations’ abilities to
bring class actions; states should expand access to the courts and mediation (as discussed above) for
homeowners facing foreclosure, by amending their foreclosure laws to require mandatory mediation;
and states should also recognize a right to consult with a trained housing counselor and, as necessary, a
lawyer before foreclosure proceedings progress.

6) Require Principal Reductions

Loan modifications that allow homeowners the opportunity to obtain mortgage principal reductions
are more likely to be successful and ultimately avoid default. This type of modification reduces the
amount due on the mortgage as well as the monthly payments. Fannie Mae and Freddie Mac, under
the Federal Housing Finance Agency’s direction, should allow mortgage principal reductions for the
loans that they own. The February 2012 settlement among major servicers and state attorneys general
included requirements for principal reductions, and their application should be expanded further,
particularly by the government sponsored enterprises.

In particular, many homeowners with negative equity (that is, who are “underwater” and owe more
than their homes are worth) have little recourse to avoid foreclosure if they are no longer able to afford
their mortgage payments. Treasury and the FHFA should provide for more effective modifications
that would include principal reductions. This would help prevent foreclosures for borrowers at risk
of default while frequently benefiting investors as well. Due to the disparity between past and present
housing prices, mortgage holders frequently come out ahead as well when principal is reduced and
a foreclosure is prevented. As recommended above, all servicers should systematically conduct Net
Present Value (NPV) analyses to determine whether the investors profit more from a loan modification
or a foreclosure.

7) Allow Mortgages to be Restructured in Bankruptcy

Currently, a loan owed on a primary residence cannot be restructured in bankruptcy. Congress should
pass legislation amending the bankruptcy code to allow bankruptcy courts to refinance mortgages
when restructuring debt. In this amended system, a bankruptcy judge would have the authority to
restructure the loan. This would allow borrowers to potentially keep their homes while the debt would
be restructured to make continuing payments possible. (It would, however, result in damaged credit
and financial monitoring for the borrower.) This bankruptcy reform could also incentivize servicers to
initiate principal reduction themselves, rather than allowing a judge to do so.36 Additionally, it would
provide the borrower with the opportunity to have a judge examine, through the bankruptcy process, the validity of the creditor’s claims to the house and whether those might be invalidated due to fraud or other illegalities, such as violations of the Truth in Lending Act.

II. Ensuring Fair and Sustainable Mortgages

As we work to reduce foreclosures and restore hard-hit communities, it is also crucial to ensure that homeownership is accessible and sustainable for working Americans going forward, and that mortgage lending becomes more equitable and transparent than it is now. Doing so is essential to our nation’s prosperity, and to family and community wealth-building in the future. The creation of the Consumer Financial Protection Bureau was an important step in this direction, but more work remains.

1) Enact Positive Reform of Government Sponsored Enterprises (GSEs)

Because loan securitization policies and practices shape the extent to which sustainable mortgages are reliably available, and are needed to incentivize the operation of inclusive, accurate lending, equitable reform of the secondary mortgage market is a crucial step. A restructured secondary mortgage market will need to ensure liquidity of home loans on a nationwide scale. It will need to serve both single-family and multifamily borrowers, with a framework that encompasses underserved markets. The GSE successor structure will need to take those inherited responsibilities into account, but must also improve upon the prior system’s record of performance in safe and sound lending to minorities. Government involvement (as through guarantees), as well as strong oversight and enforcement, will be critical to this endeavor’s success. It is important to ensure that already underserved communities, including those where credit risk may be poorly understood, are not cut off from the benefits conveyed by a government role.

Congress should pass legislation that will continue government engagement in the secondary mortgage market, to support both stability (by ensuring constant and stable funding) and coverage (by ensuring the availability of financing for sustainable loans to all qualified home buyers and owners) in mortgage lending. This should include providing guarantees for loans; pioneering flexible, sustainable lending products that can serve as models for the industry, as the GSEs have done (for example, loans with low down payments); and maintaining a strong financing system for multifamily properties. This system should also provide stable financing for a range of housing choices, including affordable (mixed-income) rental housing. It should focus on fostering an adequate supply of rental housing as well as directing the development of that housing to high-opportunity neighborhoods.

2) Issue an Accessible Definition of Qualified Residential Mortgages (QRM)

The Dodd-Frank Wall Street Reform and Consumer Protection Act included risk retention requirements intended to promote responsible behavior by lenders and securitizers. These parties previously lacked an incentive to be careful in underwriting loans since they could pass along high-risk mortgages to investors. Dodd-Frank requires financial firms to retain five percent of the risk on loans, with the exception of loans designated as “qualified residential mortgages,” or QRMs. QRMs are a category of loans deemed to be low-risk, but the terms are left largely undefined by the legislation and are currently under debate. Because banks may be reluctant to offer non-QRM loans, or may do so at an increased cost, the definition of QRMs will have an enormous impact on the accessibility of loans for many Americans and will define the primary mortgage market for the foreseeable future.

The definition of QRMs is currently pending consideration by the federal banking agencies, the Securities and Exchange Commission, the Department of Housing and Urban Development, and the Federal Housing Finance Agency. These agencies should issue a definition that does not include prohibitively high down payment requirements, as these would disproportionately exclude low-
middle-income borrowers — including many minorities — without significantly reducing risk. Moreover, research on the experience of responsible lenders like the Self Help Credit Union show that low down payment loans can be highly successful when combined with proper underwriting and consumer education. The administration should reject current proposals to limit QRMs to loans with high down payments (potentially 20 percent). Additionally, the agencies should examine how QRM criteria on borrower credit histories affect minorities, and whether it accurately reflects risk.

3) Increase Consumer Protections

Federal agencies and Congress should take steps to provide better consumer protections by supporting and engaging in robust enforcement of fair housing and predatory lending laws. Congress, for example, should provide funding for the Department of Justice and other agencies to undertake strong supervision and enforcement of these laws, and engage in oversight of federal agencies to ensure that they are vigorously enforcing the law. This includes supporting the development of robust regulations and enforcement capacity by the Consumer Financial Protection Bureau, as discussed further below.

Additionally, states should pass and enforce their own strong consumer protection laws and should enforce federal consumer protection laws to the full extent authorized under Dodd-Frank.

4) Ensure Consumer Readiness

Many families aspire to homeownership and have the potential to become successful homeowners, but need help navigating the financial aspects. The federal government can aid in consumer readiness by increasing opportunities for low-income households to save for a down payment. Approaches to this include helping families access savings by increasing the maximum homeownership withdrawal amount for IRAs and other retirement accounts, and facilitating down payment savings by scaling up asset-building programs such as Aspen’s IFS Home Accounts proposal. This would match savings (up to a capped amount) by low-income households. Congress and states could pass legislation to scale up such programs, which can complement consumer education and counseling initiatives.

5) Improve Credit Scoring Mechanisms

Credit scoring criteria that do not accurately reflect risk have been damaging to individuals, communities, and the market. And they have resulted in unwarranted loan denials to people of color in particularly high numbers.

Credit scoring systems should be adjusted to more accurately determine the credit worthiness of borrowers, and should be made more transparent. For example, the relative absence of bank branches and traditional sources of credit in many low-income and minority communities often leads to reliance on payday lenders (which charge exorbitant interest rates on quickly-approved loans) and other sources that negatively and inaccurately impact credit scores under the current criteria. Because of such factors, the use of credit scores under the current system may have a disparate impact on minority borrowers, while failing to accurately reflect risk. The Consumer Financial Protection Bureau has already taken steps to examine how the scores produced by the consumer reporting agencies (Equifax, Experian, and TransUnion) are used by lenders, and should also (in cooperation with the Federal Reserve System and the Federal Trade Commission) research and recommend elements of a consistent, nondiscriminatory, more accurate scoring system. FHFA should ensure that Fannie Mae and Freddie Mac — and any successor to those institutions — implement this improved system in their underwriting, as should FHA for the loans it insures. The CFPB’s research should be ongoing, and especially vigilant for violations of the Equal Credit Opportunity Act (which prohibits discrimination on the basis of race or other protected characteristics). The consumer reporting agencies should also be advised to monitor their own practices for discriminatory effects, and revise them as necessary.
6) Improve Federal Housing Administration Practices and Oversight

The role of the Federal Housing Administration in making homeownership accessible to working class Americans, including many families of color, has been a mixed one. After decades of actively, then indirectly, perpetuating residential segregation, the FHA more recently began contributing to the ability of low- and moderate-income Americans, including large numbers of minority borrowers, to secure mortgage loans. Problems still remain, however: FHA mortgages are more expensive than conventional loans; the entity’s regulatory authority is weak and it lacks the capacity to monitor and respond quickly to fraud; FHA has limited control over how loans it insures operate in the marketplace; and the General Accounting Office has repeatedly criticized the Administration’s oversight of lenders as lax. More broadly, relegating low- and moderate-income borrowers and borrowers of color to FHA loans would perpetuate a separate and unequal dual market in which whole communities would be isolated from the larger market and become a draw for predatory lenders.

Because the FHA will inevitably have a role — albeit hopefully not a solo role — in serving working families, including families of color, it is important to improve FHA policies and practices while ensuring (through effective secondary mortgage market reform) that the FHA does not become the only provider for these communities. HUD should engage in robust FHA oversight, and CFPB and DOJ should ensure that FHA-insured loans are fairly and sustainably offered. Additionally, Congress should ensure that FHA has sufficient resources and authority to function effectively.

7) Promote Flexible Housing Tenures

Lease-to-own programs allow occupants to lease their home for a specified period of time, while a portion of the rent goes toward a down payment. The National Community Reinvestment Coalition notes that lease-to-own (or rent-to-own) programs can help renters gradually build towards ownership. These programs offer a “stepping stone” between renting and buying, and can be an effective tool to rebuild the homeownership market. This can be particularly helpful for families who have damaged credit following a foreclosure, and it provides an alternative that allows prospective homeowners build up the credit and capital needed to buy a home.

Federal agencies can encourage sustainable programs that help people move toward homeownership, such as shared equity and lease purchase models. For example, HUD could provide incentives for such products in federal programs, such as the Community Development Block Grant program. Tax credit programs, administered by Treasury, could also be used for this purpose.

States and municipalities can also expand on existing models, such as the Cleveland Housing Network’s Lease Purchase Program, which buys and rehabilitates abandoned properties, using Low Income Housing Tax Credits, and rents them to very low-income residents.

III. Restoring Neighborhoods

The compound effect of concentrated foreclosures, in minority neighborhoods in particular, results in destabilized communities, damaged property values and tax revenue, and physical deterioration. In addition to addressing individual foreclosures, it is important to address the neighborhood effects, giving due attention to innovative solutions that have been shown to restore areas at risk.

1) Support Creation of Land Banks

Land banks provide a productive means of dealing with widespread foreclosures where the private market is unable to absorb foreclosed properties. Properties placed in a land bank are rehabilitated and eventually transferred to homeowners or developers, who return those properties to productive use.
Where there is no private market for the properties, they can be donated to the municipality as green space or community gardens.\textsuperscript{52}

The federal government should provide financial support for state and local efforts to create land banks.\textsuperscript{53} For example, Congress should authorize additional Neighborhood Stabilization Program funds, which can be used for land bank establishment.\textsuperscript{54} States should pass land bank enabling legislation — as Michigan has done — that facilitates municipalities' abilities to efficiently form and operate land banks. Foundations and private donors can help fund efforts to redevelop properties and explore new uses.

2) Require Vacant Property Registration

Vacant property registration requires owners of vacant properties (such as banks that have foreclosed on mortgages) to register those properties so that they can be held accountable for maintenance. These registration systems, currently required by a number of municipal ordinances, have been successful at the local level and should be expanded into other states and municipalities. Municipalities should also take the initiative to implement such programs, building on existing models such as that of Cincinnati.\textsuperscript{55} This would facilitate neighborhood stabilization by enabling municipalities to hold owners responsible for neglecting properties, and to charge a fee for long-term vacancies.\textsuperscript{56} States should pass legislation requiring that banks and other federally-regulated financial institutions foreclosing on a home register the vacant property with the local municipality, and Congress should explore the feasibility of expanding property registration requirements nationwide through legislation. FHA currently has minimum property maintenance standards for loans it insures, including mold prevention, and should ensure that these are being enforced.

Lenders and servicers should also responsibly maintain the properties they own. As part of this effort, they should contract with diverse, local companies to provide maintenance, security, and other necessary services.

3) Support Community Development Programs

Existing community development programs need to be strengthened to effectively stabilize communities. For example, Congress should increase investment in the Neighborhood Stabilization Program (NSP), a program run by the Department of Housing and Urban Development that focuses on the purchase and redevelopment of foreclosed and abandoned residential properties by providing grants to states and local governments on a formula basis.\textsuperscript{57} Congress should also enact and fund Project Rebuild, a proposal made by President Obama as part of the American Jobs Act. This program would create construction jobs while supporting neighborhood stabilization efforts. While this initiative would build on the NSP model, it would operate with more flexibility by allowing grantees to rebuild and repurpose distressed commercial real estate, and by allowing collaboration with private actors.

Funding for the National Housing Trust Fund is also critical. This program provides resources for the benefit of low-income households — largely for the production, preservation, rehabilitation, or operation of rental housing, and to a lesser extent to provide assistance to first-time homebuyers.\textsuperscript{58}

4) Encourage Mixed-Use Zoning

Flexibility in development aids community renewal by providing broader options for land use. Local zoning ordinances that restrict what type of land use is allowed to occur in certain areas (for example, strictly residential use) can impede this process. Municipal governments should consider passing more flexible zoning regulations that allow for more mixed-use zoning. This would help facilitate the
conversion of foreclosed and abandoned housing to other potential neighborhood stabilization uses, and has other benefits such as creating more pedestrian-friendly neighborhoods. At the federal level, Congress should expand the Community Challenge Planning Grant Program run by HUD, which supports municipalities’ efforts to create affordable, sustainable communities through mixed-use zoning and other reforms.59

5) Promote Responsible and Productive Disposition of Real Estate Owned (REO) Properties

Nonprofit organizations can redevelop foreclosed properties and return them to productive use, including as affordable housing for sale or rent. In addition to stabilizing neighborhoods by preventing vacancies, this can provide badly-needed affordable housing. However, these organizations are likely to encounter barriers in this process, including lenders and servicers who are unresponsive or unwilling to negotiate prices, as well as financial challenges with property maintenance and restoration.60 HUD’s Neighborhood Stabilization Program provides some support for real estate owned property redevelopment, and Congress should authorize increased funding for this area. Municipalities can also purchase properties for resale to nonprofit development organizations.61 Additionally, the lenders and servicers that own foreclosed properties should responsibly dispose of them, including by engaging in good faith negotiations with nonprofits to the extent that their legal obligations to investors allow.

6) Modernize the Community Reinvestment Act

The Community Reinvestment Act (CRA) requires federally insured banks and thrifts to offer credit to qualified borrowers throughout the neighborhoods from which they take deposits, and rates those institutions on the basis of their lending performance in those neighborhoods.62 This has helped reduce discriminatory credit practices (“redlining”) that have historically excluded low-income communities.63 The CRA can help restore wealth to communities impacted by the foreclosure crisis, but it is in need of modernization and better enforcement.

Congress should revise and expand the CRA to apply to a broader array of institutions, including all mortgage lenders, loan servicers, investment banks, securities companies, credit unions, and insurance companies.64 Additionally, a more nuanced rating system should be implemented and CRA credit should be awarded for sustainable, affordable lending to qualified minority borrowers on an equal opportunity basis, as well as for funding Community Development Financial Institutions, which function as small business lenders in low- and moderate-income communities.65

IV. Rebuilding Economic Security

When rising foreclosures result in mass evictions, the entire community suffers. Families can be displaced or even left homeless, with damaged credit and few options for the future. Programs designed to stabilize occupancy help to keep neighborhoods intact and homes occupied, and give residents a foothold to help them rebuild their lives during a time of economic turbulence.

1) Expand Owner Re-Sale Seed Capital Programs

Owner re-sale programs involve a third party that purchases the foreclosed property and re-sells it to the former owner at a reasonable price, as in Boston Community Capital’s SUN program.66 Such local-level efforts would benefit from Congressional involvement to bring them to scale, through new legislation and investment that would support expansion of the BCC model. In a positive step, the Treasury Department recently issued guidance allowing non-profits to buy properties through a short sale and convey them back to former owners.67 Other nonprofits, with the support of foundations, can seek to expand on the BCC model and build additional owner re-sale programs.
2) Expand Own-to-Rent Programs

Own-to-rent (or sale-leaseback) programs allow former homeowners to stay in place and rent their residence after foreclosure. As with owner resale programs, these have been local-level efforts that would benefit from federal involvement to bring them to scale.

The National Community Reinvestment Coalition and the Center for Economic and Policy Research have recommended a residential sale-leaseback arrangement called the “Right to Rent” plan, in which an investor purchases a property and immediately rents it to the previous owner. Congress and state legislators could implement this “Right to Rent” plan by passing legislation that would give former owners the right to remain in their property at market rate rent for a significant length of time, such as five or ten years. This plan would allow owners facing foreclosure to avoid displacement and maintain family and neighborhood stability. Additionally, while Fannie Mae and Freddie Mac currently have small own-to-rent programs in place, they should expand those programs to cover a larger number of mortgages.

3) Make the Protecting Tenants at Foreclosure Act Permanent, with a Private Right of Action

Renters suffer from foreclosures as well. As rental properties are transferred among owners, evictions and poor building maintenance often result. Renters in foreclosed properties are protected by the Protecting Tenants at Foreclosure Act, passed in 2009 and effective through 2014. The Act provides that tenants may see out the term of their lease, and that 90 days’ notice must be provided before eviction. Additionally, foreclosed properties owned by Fannie Mae are subject to a Tenant-in-Place policy, which allows renters to remain in occupancy. However, Congress should make the PTFA permanent and strengthen it. This includes enhancing enforcement of PTFA protections, increasing awareness of the law, and providing a private cause of action so that affected Americans can protect their interests in court. Strengthening the PTFA should also involve requiring an affirmative showing of compliance with the act before an eviction could proceed.

States and localities should also pass laws protecting tenants and notifying them of their rights during foreclosures. As the PTFA does not preempt strong state laws, states can pass legislation with additional protections.

4) Expand Homelessness Prevention Programs

The federal government could be more effective in preventing homelessness among displaced households through increased funding for its grant programs, in particular the Emergency Solutions Grants administered by HUD, which provide funding to local governments and nonprofits to operate transitional housing and shelter programs, as well as for homelessness prevention. The Emergency Solutions Grants program prevents individuals and families from becoming homeless and helps those who are experiencing homelessness to be quickly re-housed, for example by providing rental and deposit assistance and help with housing placement. Congress should increase funding for this important initiative. As another helpful measure, HUD could add guidance on using Neighborhood Stabilization Programs to support re-housing initiatives.

5) Provide Credit Protection for Former Owners

It is also important to ensure that Americans are able to secure access to credit going forward. Many former homeowners have badly damaged credit following foreclosures, at a time when they are struggling to rebuild their lives. Tight credit has many ramifications, meaning that people may no longer be able to make simple, necessary transactions, such as obtaining auto loans, as well as
obtaining housing (including rentals). Diminished credit on a market-wide level also drives down home values even further, since fewer potential purchasers have the means to buy. Federal agencies such as Federal Housing Administration and Veterans Administration should offer “second chance” loans (designed to help borrowers repair their credit) for families whose financial condition stabilizes in the future.

V. Fostering Fair Housing

Despite the progress that we’ve made as a nation, barriers to fair housing remain in areas across America. Neighborhoods and metro areas remain highly segregated. Also, minorities are much more likely to live in areas of concentrated poverty, meaning that low-income people of color are more economically isolated than are low-income white people. Poverty’s social effects therefore reverberate and are amplified more strongly throughout their communities. Thus, poor blacks and Native Americans were three times more likely than poor whites to live in extreme-poverty areas. Poor Latinos and Asian Americans were both roughly twice as likely.

Federally-funded programs, moreover, too often contributed to the problem; by fostering affordable housing far from opportunities like employment and quality education; by perpetuating segregated living patterns; and by failing to enforce the fair housing obligations of public and private beneficiaries of taxpayer funds. Equal opportunity principles and fair housing rules must be a part of our housing and lending system, especially where government engagement and taxpayer funds are involved.

1) Strengthen Fair Housing Regulations

The financial crisis has shown the importance of strong rules and oversight authority, as well as the destructive results of unfair lending. Federal agencies are responsible both for ensuring nondiscrimination and affirmatively furthering fair housing, and must also attend to the impacts of mortgage securitization policies and practices on civil rights. This entails focusing resources and issuing strong regulations and guidance to effectively implement Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), relevant provisions of Dodd-Frank, the Equal Credit Opportunity Act, and other laws.

An important gap in fair housing protections is the lack of pertinent regulations or guidance implementing the duty to affirmatively further fair housing under the Fair Housing Act. This duty extends to all “programs and activities relating to housing and urban development” that are “operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions).” Yet the Treasury Department, for example, lacks any fair housing regulations or guidance. It similarly has failed to implement Title VI of the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, ethnicity, or national origin in programs receiving federal funds. Treasury should immediately issue comprehensive equal opportunity regulations. And HUD should issue strengthened regulations implementing the federal government’s obligation to affirmatively further fair housing and to prevent discrimination in federally-funded programs. It should also clarify the obligation of the housing sector to avoid practices that have unjustified adverse impacts on Americans based on race, gender, disability, or other aspects of their identity.

2) Improve Coordination of Equal Opportunity Enforcement Among Federal Agencies, State and Local Governments

While existing laws can help protect homeowners and future borrowers, stronger, more coordinated enforcement of these laws is needed. The creation of the Consumer Financial Protection Bureau was
an excellent step in this direction, but federal agencies, including Housing and Urban Development, Justice, Treasury, the Securities and Exchange Commission, and the Consumer Financial Protection Bureau, must better coordinate their efforts to ensure effective enforcement of antidiscrimination laws in both the primary and secondary mortgage markets. Examples of these laws include the Fair Housing Act, which promotes integration and prohibits discrimination in the provision of housing and related services. Lenders who discriminate may be liable under the Fair Housing Act — in relation to “reverse redlining” practices, where minority communities were targeted for predatory lending. The recent Dodd-Frank Act contains additional protections, such as establishment of the Consumer Financial Protection Bureau, which has the authority to issue rules to protect consumers; prohibition of mortgage terms and practices found unfair, deceptive, or predatory; and liability for mortgage originators in violation of their duty of care or anti-steering provisions.

Despite such protections, the Kirwan Institute at Ohio State University found that HUD, banking regulators, and DOJ have so far failed to engage effectively in “any meaningful, coordinated, visible enforcement effort.” Kirwan recommends a system that “directly connects examinations of underwriting practices, lending outcomes, and actual, comprehensive enforcement.” The President should instruct these agencies to better coordinate their enforcement activities, and agencies should allocate resources for this purpose.

States and municipalities may also engage in fair housing and lending enforcement, and should do so through their own laws, as well as enforcement of federal statutes. For example, cities whose neighborhoods have been victimized by discrimination should consider suing lenders under the Fair Housing Act. State attorneys general should vigorously enforce the terms of their February 2012 settlement agreement with major loan servicers, and hold servicers accountable where they fail to abide fully with its terms. In addition, attorneys general should investigate and prosecute violations beyond those addressed by the settlement.

3) Develop Robust Consumer Financial Protection Bureau Regulations

Policymakers should prioritize developing the Consumer Financial Protection Bureau (CFPB), which is designed to serve as a robust, focused consumer protection agency. The CFPB is intended to be an “independent financial watchdog” that creates and strengthens consumer protection laws. The agency has jurisdiction over a broad range of financial service providers, including banks, credit unions, and mortgage-related businesses including brokers, payday lenders, and consumer reporting agencies.

The fledgling agency is in the process of developing rules and engaging with stakeholders. It needs to issue muscular rules that serve the agency’s intended purpose, for example through strong fair lending enforcement. The CFPB also should monitor the mortgage market for new forms of innovation in predatory lending; examine data from the Home Mortgage Disclosure Act (HMDA) to determine how new rules affect access to credit; and share information relevant to Community Reinvestment Act ratings with HUD.

4) Incentivize Inclusionary Zoning

Inclusionary zoning is a practice under which municipalities require a share of new construction in their jurisdiction to be affordable to people with low and moderate means. It both expands the housing opportunities available to all residents and, when properly employed, fosters more integrated communities. It also creates greater access to quality jobs, schools, and amenities. A number of states, such as Massachusetts and New Jersey, have adopted legislation that promotes inclusionary zoning. Additional state and municipal governments should follow their lead. The federal government should incentivize their approaches, moreover, through their allocation of public funding, their guidance on fair housing best practices, and their enforcement of civil rights laws.
Conclusion

The solutions recommended here are supported by voluminous research by experts and decades of experience by innovative communities, agencies, companies, and non-profits around the country. Adopting them now, as our nation struggles to recover from deep economic injury, can help restore the promise of opportunity and the American Dream, today and long into the future.

Endnotes


5 “A National Tragedy: HMDA Data Highlight Homeownership Setbacks for African Americans and Latinos,” Center for Responsible Lending Issue Brief (Sept. 2010).


13 Id.


17 Id.


19 NCRC, “Rebuilding Communities” at 5-6.

20 NCRC, “Rebuilding Communities” at 3, 5.


23 Id. at 28.


26 See HAMP program website at: http://makinghomeaffordable.gov/about.html.


29 NCRC, “The Foreclosure Crisis and Its Impact” at 15.

30 See “From Foreclosure to Re-Redlining,” CRC, at 24-25, citing research findings from the Federal Reserve Bank of New York.

31 Id. at 26, 30.

32 Id. at 32, describing lack of information provided to LEP renters regarding how to submit payments.


35 “Foreclosures: A Crisis in Legal Representation,” http://brennan.3cdn.net/a5bf8a685cd0885f72_s8m6bevkx.pdf at 4.


38 Id. at 12.


NCRC, “Rebuilding Communities” at 18.

Id. at 19.

Id. at 18.


Id. at 13-14.


Id. at 110.


See, e.g., The Community Reinvestment Act: Thirty Years of Accomplishments, but Challenges Remain, Hearing before the House Committee on Financial Services (Feb. 13, 2008).


Id. at 17.


NCRC, “Rebuilding Communities” at 10, citing Baker, Dean. “Subprime Borrowers Deserve an Own to Rent Transition,” Economists’ Voice (February 2008).


See program website at: http://www.hudhre.info/sgf/.


Id. at 30.


These requirements are illustrated by recent caselaw, including U.S. ex rel. Anti-Discrimination Center v. Westchester County, 668 F.Supp.2d 548 (S.D.N.Y. 2009), which found that Westchester County had made false affirmatively furthering fair housing certifications in requesting HUD funds, and held that this certification was not a mere formality, but rather a substantive requirement requiring the County to conduct an analysis of impediments, including racial segregation, and take appropriate actions in response; and Thompson v. HUD, 404 F.3d 821(4th Cir. 2005), which held that due to HUD’s duty to AFFH, it was responsible for promoting regional housing solutions to segregation.


Id.


The Opportunity Agenda

568 Broadway
Suite 302
New York, NY 10012
Tel: 212.334.5977
Fax: 212.334.2656

www.opportunityagenda.org

The Opportunity Agenda is a project of Tides Center.